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20 LDC

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

29 DAVID L. DEFREES, et al., } Case No. CV 11-04272 JLS (SPx)
30 Plaintiffs, } consolidated with Case No. CV 11-04574
31 v. JOHN C. KIRKLAND, et al., } JLS (SPx)
32 Defendants, } (Derivative Action)
33 and U.S. AEROSPACE, INC. } STIPULATION OF SETTLEMENT
34 Nominal Defendant. }

1 This Stipulation of Settlement dated as of December 15, 2017 (the
 2 “Stipulation”) is made and entered into by and among the following Settling
 3 Parties¹ to settle the Litigation (as defined below): (i) representative plaintiffs
 4 Frederick Rich (“Rich”), CAMOFI Master LDC and CAMHZN Master LDC
 5 (together, the “CAM Funds”) on behalf of themselves, and derivatively on behalf of
 6 Nominal Defendant U.S. Aerospace, Inc. (“USAE”), by and through their counsel
 7 of record; and (ii) Defendants Dentons US LLP² (“Dentons”), James D. Henderson,
 8 Michael Goldberg, Charles Arnold (“Arnold”), TUSA Acquisition Corp.
 9 (“TUSA”), Daisy Rodriguez, and KC-X American Aerospace, LLC (“KC-X”)
 10 (collectively, the “Settling Defendants”), by and through their counsel of record in
 11 the Litigation. The Stipulation is intended by the Settling Parties to fully, finally
 12 and forever resolve, discharge and settle the Released Claims, upon and subject to
 13 the terms and conditions hereof.

14 **I. THE LITIGATION**

15 On May 18, 2011 and May 26, 2011, Plaintiff Rich and the CAM Funds,
 16 respectively, filed derivative complaints in the United States District Court for the
 17 Central District of California on behalf of nominal Defendant USAE. The
 18 Complaints allege, *inter alia*, that several defendants entered into two sham
 19 transactions that ultimately transferred a controlling interest in USAE to their
 20 family, friends and affiliates. Plaintiffs’ complaints include causes of action for
 21 breach of fiduciary duty, legal malpractice, vicarious liability, aiding and abetting
 22 breach of fiduciary duty, corporate waste and civil conspiracy. The parties
 23 vigorously litigated this action and trial of this matter was scheduled to take place
 24 on February 28, 2017. *See* Docket No. 534.

25
 26 ¹ Capitalized terms are defined in Section IV, Part 1.

27 ² Plaintiffs initially named Luce, Forward, Hamilton & Scripps LLP (“Luce
 28 Forward”) as a defendant. Luce Forward subsequently merged into McKenna Long
 & Aldridge LLP (“McKenna”), which later merged into Dentons. This Stipulation
 applies to all three law firms.

1 **II. CLAIMS OF THE PLAINTIFFS AND BENEFITS OF SETTLEMENT**

2 Plaintiffs assert that the claims alleged in the Litigation have merit.
 3 Nevertheless, Plaintiffs recognize and acknowledge the expense and length of
 4 continued proceedings, including the impending trial, necessary to prosecute the
 5 Litigation against Defendants through trial and, potentially, through appeals.
 6 Plaintiffs have also taken into account the uncertain outcome and the risk of any
 7 litigation, especially in complex actions such as the Litigation, as well as the
 8 difficulties and delays inherent in such litigation. Plaintiffs are also mindful of the
 9 inherent problems of proof and possible defenses to the claims asserted in the
 10 Litigation. Plaintiffs have further considered the uncertainty as to what they may
 11 be entitled to recover on behalf of USAE even if they were to prevail on some or all
 12 of their claims, as well as the potential expenses and difficulties associated with
 13 collecting on any judgments against Defendants. Based on their evaluation, and the
 14 evaluation of Plaintiffs' Counsel, Plaintiffs have determined that it is desirable to
 15 settle the Litigation on the terms set forth in the Stipulation.

16 **III. DENIALS OF WRONGDOING AND LIABILITY**

17 Dentons, Mr. Henderson, Arnold, Daisy Rodriguez, TUSA and KC-X³
 18 expressly have denied and continue to deny all charges of wrongdoing or liability
 19 arising out of any of the conduct, statements, acts or omissions alleged, or that
 20 could have been alleged, in the Litigation, and also deny and continue to deny, *inter*
 21 *alia*, the allegations that Plaintiffs, USAE or its stockholders or creditors suffered
 22 damages as a result of the conduct alleged in the Litigation.

23 Pursuant to orders dated October 30, 2014 and January 26, 2016, defaults
 24 were entered against defendants John C. Kirkland ("Kirkland"), Arnold, Daisy
 25 Rodriguez, Michael Goldberg, Kenneth Kooock, Hal Kolker, American Defense
 26 Investments ("ADI"), TUSA, Richard Berkshire, the Estate of Richard Fixaris, and

27 ³ Pursuant to an Order Granting Stipulation to Set Aside Entry of Default dated
 28 August 31, 2015, the entry of default against defendant Henderson in the *Rich*
 matter was vacated. Docket No. 325.

1 KC-X, and against nominal defendant USAE. CAMOFI Docket No. 388, Rich
 2 Docket No. 280. However, upon the Effective Date, defaults against all signatories
 3 to the Stipulation of Settlement, the Estate of Richard Fixaris, Richard Berkshire
 4 and/or director defendants Kenneth Koock and Hal Kolker will be vacated, and
 5 therefore, in connection with this settlement, those Defendants deny any
 6 wrongdoing or damages as a result of their alleged conduct.

7 Nonetheless, Settling Defendants have concluded that further continuation of
 8 the Litigation would be protracted and expensive, and that the Litigation should be
 9 fully and finally settled in the manner and upon the terms and conditions set forth in
 10 this Stipulation.

11 **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

12 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by
 13 and among Plaintiffs (for themselves and derivatively on behalf of USAE), and
 14 Settling Defendants, by and through their respective counsel or attorneys of record,
 15 that, subject to the approval of the Court, the Litigation and the Released Claims
 16 shall be finally and fully compromised, settled and released, and the Litigation shall
 17 be dismissed with prejudice, as to all Settling Parties and Released Defendants (as
 18 defined herein), upon and subject to the terms and conditions of the Stipulation, as
 19 follows:

20 **1. Definitions**

21 As used in the Stipulation the following terms have the meanings specified
 22 below:

23 1.1. “U.S.A.E.” or the “Company” means Nominal Defendant U.S.
 24 Aerospace, Inc. (f/k/a New Century Companies, Inc.) and its affiliates, subsidiaries,
 25 parents, predecessors and/or successors, including, but not limited to, USAE LLC.

26 1.2. “U.S.A.E. Shares” means USAE shares or common stock equivalents or
 27 that of its predecessor company, New Century Companies, Inc.

1 1.3. “USAE Shareholders” means holders of USAE shares or common
2 stock equivalents.

3 1.4. “Claims Administrator” means the qualified, third party selected by
4 Plaintiffs’ Counsel and approved by the Court in the Preliminary Approval Order to
5 administer this Stipulation, including implementing the Notice provisions herein.

6 1.5. “Claim Form” means the claim form, substantially in the form set forth
7 in Exhibit E attached hereto, which form must be timely and fully completed and
8 submitted by each USAE Shareholder who wishes to receive, and is eligible to
9 receive, payment of settlement benefits under the terms of this Stipulation.

10 1.6. “Claims Period” means the time during which USAE Shareholders
11 may timely submit Claim Forms pursuant to Section 2.2.2., which shall span from
12 the Notice Date and end on the 90th day or such day as the Court grants thereafter.

13 1.7. “Defendants” mean Luce Forward, McKenna, Dentons, John C.
14 Kirkland, Charles Arnold, James D. Henderson, Michael Goldberg, Kenneth
15 Koock, Hal Kolker, Jerrold Pressman, ADI, TUSA, Richard Berkshire, Daisy
16 Rodriguez, KC-X and Estate of Richard Fixaris. For clarity, the term “Settling
17 Defendants” shall include only the defendants who are signatories to this
18 Stipulation of Settlement, including all defaulted defendants who are signatories to
19 this Stipulation of Settlement.

20 1.8. “Litigation” means the following consolidated derivative actions filed
21 on behalf of USAE in the United States District Court for the Central District of
22 California: *Defrees v. Kirkland*, Case No. CV 11-04272 JLS (SPx); *CAMOFI*
23 *Master LDC v. Pressman*, Case No. CV 11-04574 JLS (SPx).

24 1.9. “Effective Date” means the first date by which all of the events and
25 conditions specified in section 5.9 of this Stipulation have been met and have
26 occurred.

27 1.10. “Final,” with respect to the Judgment, means the later of: (i) if
28 USAE Shareholders make no objection to the Settlement before the deadline set

1 forth in Exhibit B, the date of the Judgment; or (ii) if there is an appeal from the
2 Judgment, the date of final affirmance on appeal and the expiration of the time
3 for any further judicial review, whether by appeal, reconsideration or a petition
4 for a writ of certiorari and, if certiorari is granted, the date of final affirmance of
5 the Judgment following review pursuant to the grant; or (iii) the date of final
6 dismissal of any appeal from the Judgment or the final dismissal of any
7 proceeding on certiorari to review the Judgment; or (iv) the expiration of the
8 time for the filing or noticing of any appeal from the Court's Judgment, which is
9 thirty (30) calendar days after the Judgment is entered on the Court's docket (or, if
10 the date for taking an appeal or seeking review of the Judgment shall be extended
11 beyond this time by order of the Court, by operation of law or otherwise, or if
12 such extension is requested, the date of expiration of any extension if any appeal
13 or review is not sought); or (v) if the Court enters a judgment substantially
14 different from the form of Judgment set forth in Exhibit A hereto (an
15 "Alternative Judgment") and the Settlement is not terminated, the date that such
16 Alternative Judgment becomes final as defined in parts (i) to (iv) above and no
17 longer subject to appeal or review. However, any appeal or proceeding seeking
18 subsequent judicial review pertaining solely to any award of attorneys' fees or
19 expenses shall not in any way delay or affect the time set forth above for the
20 Judgment or Alternative Judgment to become Final, or otherwise preclude the
21 Judgment or Alternative Judgment from becoming Final.

22 1.11. "Judgment" means the judgment to be rendered by the Court
23 substantially in the form attached hereto as Exhibit A.

24 1.12. "Law Firm Defendants" shall mean Dentons, McKenna, Luce Forward
25 and Kirkland.

26 1.13. "Notice" means the notice substantially in the form attached hereto as
27 Exhibit B.

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1 1.14. “Notice Date” means the later of: (1) the date on which the Summary
 2 Notice is published in Investor’s Business Daily; or (2) the date the mailing of the
 3 Notice to USAE Shareholders is completed.

4 1.15. “Person” means a natural person, individual, corporation, partnership,
 5 limited partnership, limited liability partnership, limited liability company,
 6 association, joint venture, joint stock company, estate, legal representative, trust,
 7 unincorporated association, government or any political subdivision or agency
 8 thereof, any business or legal entity, and any spouse, heir, legatee, executor,
 9 administrator, predecessor, successor, representative or assign of any of the
 10 foregoing.

11 1.16. “Plaintiffs” means Frederick Rich, CAMOFI Master LDC and
 12 CAMHZM Master LDC, individually and derivatively on behalf of USAE.

13 1.17. “Plaintiffs’ Counsel” means (i) Wolf Haldenstein Adler Freeman &
 14 Herz LLP (“Wolf Haldenstein”), Rachele R. Rickert, Brittany N. DeJong, 750 B.
 15 Street, Suite 2770, San Diego, CA 92101, and Daniel W. Krasner, 270 Madison
 16 Avenue, New York, NY 10016; and Michael C. Hefter and Ryan M. Philp, Hogan
 17 Lovells US LLP, 875 Third Avenue, New York, New York, 10022.

18 1.18. “Plaintiff’s Incentive Award” means the amount of any incentive
 19 award to Plaintiff Rich approved by the Court.

20 1.19. “Preliminary Approval Order” means an order substantially in the
 21 form attached hereto as Exhibit C.

22 1.20. “Related Persons” means each of a Defendant’s present or former
 23 partners, employees, spouses, relatives, heirs, executors, estates, and administrators,
 24 parents, subsidiaries, predecessors, successors, affiliates, assigns, shareholders,
 25 directors, officers, principals, members, managers, attorneys, agents,
 26 representatives and insurers.

27 1.21. “Released Claims” shall collectively mean all claims (including
 28 “Unknown Claims” as defined in section 1.27 hereof), demands, rights, liabilities

1 and causes of action of every nature and description whatsoever, known or
2 unknown, whether or not concealed or hidden, which have been or could have been
3 asserted by Plaintiffs derivatively on behalf of USAE against the Released
4 Defendants in state or federal court or in arbitration or similar proceedings,
5 including, without limitation, those arising out of or based upon or related to
6 USAE, the Litigation or the defense, Settlement or resolution of the Litigation. For
7 the avoidance of doubt, Released Claims shall not include any award of sanctions
8 ordered by the Court or judgments reflecting liability for such orders against
9 Kirkland, ADI or their counsel, Mark Vega.

10 1.22. “Released Defendants” means each and all of the Settling Defendants
11 and the Related Persons, as well as John C. Kirkland, Hal Kolker, Kenneth J.
12 Koock, the Estate of Richard Fixaris, Richard Berkshire and Jerrold S. Pressman.

13 1.23. “Settlement” means the agreement between the Settling Parties to
14 resolve the Litigation, as described in this Stipulation.

15 1.24. “Settling Party or Settling Parties” means, collectively, Defendants
16 who are signatories to the Stipulation and the Plaintiffs.

17 1.25. “Stipulation” means this Stipulation of Settlement.

18 1.26. “Summary Notice” means the summary notice substantially in the
19 form attached hereto as Exhibit D.

20 1.27. “Unknown Claims” means any Released Claim which any Settling
21 Party does not know or suspect to exist in his, her or its favor at the time of the
22 release of the Released Defendants which, if known by him, her or it, might have
23 affected his, her or its Settlement with and release of the Released Defendants, or
24 might have affected his, her or its decision not to object to this Settlement. With
25 respect to any and all Released Claims, the Settling Parties stipulate and agree that,
26 upon the Effective Date, the Settling Parties each shall expressly waive, and by
27 operation of the Judgment shall be deemed to have expressly waived, the
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1 provisions, rights and benefits of California Civil Code section 1542, which
2 provides:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
4 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
5 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
6 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
7 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
8 WITH THE DEBTOR.

9 The Settling Parties each shall expressly waive, and by operation of the
10 Judgment shall be deemed to have expressly waived, any and all provisions, rights
11 and benefits conferred by any law of any state or territory of the United States, or
12 principle of common law, which is similar, comparable or equivalent to California
13 Civil Code section 1542. The Settling Parties each may hereafter discover facts in
14 addition to or different from those which he, she or it now knows or believes to be
15 true with respect to the subject matter of the Released Claims, but, upon the
16 Effective Date, the Settling Parties each shall expressly have, and by operation of
17 the Judgment shall be deemed to have, fully, finally, and forever settled and
18 released any and all Released Claims, known or unknown, suspected or
19 unsuspected, contingent or non-contingent, whether or not concealed or hidden,
20 which now exist, or heretofore have existed upon any theory of law or equity now
21 existing or coming into existence in the future, including, but not limited to,
22 conduct which is negligent, intentional, with or without malice, or a breach of any
23 duty, law or rule, without regard to the subsequent discovery or existence of such
24 different or additional facts. The Settling Parties acknowledge that the foregoing
25 waiver was separately bargained for and is a material element of the Settlement of
26 which this release is a part.

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1 **2. Consideration for Settlement of the Derivative Claims**

2 **2.1. Payment.** The amount to be paid in full consideration of the
 3 Settlement shall be \$12.2 million (the “Settlement Amount”). Of this amount, \$10
 4 million shall be paid by the insurer(s) for Luce Forward, and the remaining \$2.2
 5 million shall be paid by the remaining Settling Defendants, excluding the Law Firm
 6 Defendants and their insurer(s). Of the \$2.2 million, Defendants Charles Arnold,
 7 Daisy Rodriguez, KC-X and TUSA shall be jointly responsible for \$5,000 and shall
 8 not be responsible for any other payment in connection with the Settlement. The
 9 Settlement Amount covers all claims brought by Plaintiffs against Released
 10 Defendants and neither the Released Defendants nor their insurers will be required
 11 to pay any additional amounts whether for attorneys’ fees, costs or expenses or
 12 otherwise. After receiving appropriate W-9(s) and wiring instructions, payments of
 13 the Settlement Amount shall be made into an escrow account no later than thirty
 14 (30) days following entry by the Court of the Preliminary Approval Order. Daniel
 15 W. Krasner and Michael C. Hefter shall serve as co-escrow agents and/or co-
 16 account holders (the “Co-Escrow Agents”). After the Court enters the Judgment,
 17 the Co-Escrow Agents shall distribute the Settlement Amount to the CAM Funds
 18 and USAE’s shareholders in accordance with section 2.2 below. No distributions
 19 will be made without the authorizing signatures of both of the Co-Escrow Agents.

20 **2.2. Distribution.** The Settlement Amount shall be distributed as follows:

21 **2.2.1.** \$10.6 million to the CAM Funds on account of (i) the CAM
 22 Funds’ senior secured notes and (ii) fees and expenses incurred in connection with
 23 the prosecution of this Action.

24 **2.2.2.** Up to \$290,000 of the Settlement Amount to current USAE
 25 Shareholders who held USAE Shares on March 31, 2010, and who continued to
 26 hold USAE Shares as of February 21, 2017, other than Defendants and the Related
 27 Persons, as provided in the Preliminary Approval Order (the “Shareholder
 28 Distribution”). USAE Shareholders, other than Defendants and the Related

1 Persons, who submit to the Claims Administrator valid claims, with appropriate
2 documentation of their eligibility to participate in the distribution, shall receive,
3 subject to proration as provided below, up to \$0.07 times the lesser of: (1) the
4 number of USAE Shares they held on March 31, 2010; and (2) the number of
5 USAE Shares they held on February 21, 2017. In order to participate in the
6 distribution under this Section, USAE Shareholders must submit a completed Claim
7 Form, substantially in the form attached hereto as Exhibit E, during the Claims
8 Period for consideration and approval by the Claims Administrator along with
9 evidence of the number of USAE Shares they held on March 31, 2010 and on
10 February 21, 2017. The Claims Administrator shall determine if each claim is
11 valid. For the avoidance of doubt, shares received in connection with the purported
12 settlement between USAE and Omnicom Holdings, Inc. are not eligible to receive a
13 distribution from the Settlement Amount. USAE Shareholders who fail to make a
14 valid claim for distribution benefits will not receive any portion of the Settlement
15 Amount.

16 2.2.3. If the total of all valid claims is greater than \$290,000, then the
17 Claims Administrator shall make a pro rata adjustment and issue distribution
18 checks in the pro rata amount, using the following formula:

20 Pro rata adjustment = \$290,000
21 Total value of all claims

22 Pro rata adjustment x Shareholder
23 claim amount = Shareholder payment

24 2.2.4. Notice and administration costs of up to \$15,000 shall be paid
25 from the interest earned on the Settlement Amount escrow account. Any notice and
26 administration costs that exceed \$15,000 shall be paid from the Shareholder
27 Distribution prior to any pro rata adjustment as provided above in section 2.2.3 or
28 payment to CAM Funds of the remainder.

1 2.2.5. Any portion of the Settlement Amount remaining after all the
 2 notice and administration costs are paid and the Shareholder Distribution is made
 3 shall be paid to the CAM Funds.

4 2.2.6. Provided the funds are received by the CAM Funds pursuant to
 5 section 2.2.1, an alternative court-ordered distribution of the Settlement Amount
 6 shall not be grounds for termination or cancellation of the Settlement.

7 2.3. Rescission of Series E Preferred Shares. The Settling Parties agree
 8 that the Series E Preferred shares are declared null and void and cannot be
 9 converted into USAE common stock and that neither ADI nor TUSA shall receive
 10 any distribution from the Settlement Amount from this Litigation.

11 **3. Releases**

12 3.1. Upon the Effective Date, as defined in section 1.9, Plaintiffs, on their
 13 own behalf individually and derivatively on behalf of USAE, shall have, and by
 14 operation of the Judgment shall be deemed to have, fully, finally, and forever
 15 released, relinquished and discharged: (a) all Released Claims, including Unknown
 16 Claims, against the Released Defendants; and (b) any and all claims, whether
 17 known or unknown, against the Released Defendants, arising out of, relating to, or
 18 in connection with USAE, the Litigation, or the defense, Settlement or resolution of
 19 the Litigation; provided, however, that the Released Claims shall not include any
 20 award of sanctions ordered by the Court or judgments reflecting liability for such
 21 orders against Kirkland, ADI or their counsel, Mark Vega.

22 3.2. Upon the Effective Date, as defined in section 1.9, each of the Settling
 23 Defendants shall be deemed to have, and by operation of the Judgment shall have,
 24 fully, finally, and forever released, relinquished and discharged Plaintiffs,
 25 Plaintiffs' Counsel, David DeFrees and his estate, Simon Gershon, Centrecourt
 26 Asset Management, Richard Smithline, Dan Ly and Michael Loew from all claims
 27 (including Unknown Claims), arising out of, or relating to, USAE or arising out of,
 28 relating to, or in connection with the institution, prosecution, assertion, Settlement

1 or resolution of the Litigation or the Released Claims. Settling Defendants further
 2 agree that they will not commence any further litigation on behalf of, or in the name
 3 of, USAE, its predecessors or successors.

4 **4. Plaintiffs' Counsels' Attorneys' Fees and Reimbursement of**
 5 **Expenses and Plaintiff Rich's Incentive Award**

6 4.1. Plaintiff Rich's counsel, Wolf Haldenstein, intends to submit,
 7 concurrently with the application for the Court's approval of the Settlement
 8 contemplated by this Stipulation, an application for an award of attorneys' fees in
 9 the amount of \$1,000,000, plus expenses incurred of up to \$300,000 (the "Fee and
 10 Expense Application") for the benefits conferred on USAE and its debtor and
 11 shareholders. The CAM Funds intend to satisfy any fees and expenses incurred in
 12 connection with the prosecution of this action out of the Settlement Amount as set
 13 forth in Section 2.2, and will not seek any reimbursement of fees and expenses,
 14 provided that \$10.6 million of the Settlement Amount is distributed to the CAM
 15 Funds in accordance with Section 2.2. The Settling Defendants will not oppose
 16 Wolf Haldenstein's Fee and Expense Application, nor will the CAM Funds,
 17 provided the Settlement Amount is distributed in accordance with Section 2.2.
 18 Such attorneys' fees and expenses as are awarded by the Court shall be paid from
 19 the Settlement Amount to Wolf Haldenstein within thirty (30) days after the date on
 20 which the Court enters the order awarding the fees and expenses. Except as
 21 expressly provided herein, Plaintiffs and Plaintiffs' Counsel shall bear their own
 22 fees, costs and expenses, and no Defendant shall assert any claim for expenses,
 23 costs and fees against Plaintiffs or Plaintiffs' Counsel. A fee award that is less than
 24 the amount requested by Plaintiff Rich's Counsel shall not be grounds for
 25 termination or cancellation of the Settlement. Neither Settling Defendants nor their
 26 insurance carrier(s) shall have any obligation to fund any award of fees or costs in
 27 addition to the payment of the Settlement Amount, which amount is expressly
 28 inclusive of all awards, attorneys' fees and costs.

1 4.2. Plaintiffs' Counsel shall apply for a Plaintiff's Incentive Award to be
2 paid to Plaintiff Rich from the Settlement Amount in recognition for his
3 contribution to this derivative action. The Plaintiff's Incentive Award shall not
4 exceed \$10,000.

5 4.3. Any portion of the \$1.3 million in attorneys' fees and expenses not
6 awarded to Wolf Haldenstein and any portion of the \$10,000 not awarded to
7 Plaintiff Rich shall be distributed *pro rata* to the CAM Funds and the USAE
8 Shareholders based upon the percentages of the settlement funds received under
9 sections 2.2.1 and 2.2.2 or as otherwise ordered by the Court.

10 **5. Conditions of Settlement, Effect of Disapproval, Cancellation or**
11 **Termination**

12 5.1. Each of the Settling Parties or their counsel shall execute this
13 Stipulation. Promptly following execution of this Stipulation, Plaintiffs shall
14 present the Stipulation to the Court for preliminary approval and shall apply to the
15 Court for entry of the Preliminary Approval Order in the form attached hereto as
16 Exhibit C.

17 5.2. On or before the dates set forth herein and consistent with Rule 23.1 of
18 the Federal Rules of Civil Procedure, the Claims Administrator shall: (i) mail to
19 USAE stockholders the Notice in the form attached hereto as Exhibit B, describing
20 this Settlement, advising USAE stockholders of the opportunity to participate in the
21 distribution, setting a date by which stockholders must file objections, which shall
22 be no later than forty-five (45) days from the date of the Preliminary Approval
23 Order, and advising stockholders of the scheduling of a hearing to consider the
24 Settlement as set forth in this Stipulation; and (ii) publish in Investor's Business
25 Daily the Summary Notice in the form attached hereto as Exhibit D. All costs and
26 expenses related to disseminating Notice and Summary Notice shall be paid from
27 the Settlement Amount.

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1 5.3. Plaintiffs and Plaintiffs' Counsel shall take all appropriate steps and
2 use their best efforts to obtain final approval of this Stipulation by the Court in
3 accordance with Federal Rule of Civil Procedure 23.1. The Settling Defendants
4 will cooperate with Plaintiffs and Plaintiffs' Counsel in their effort to obtain such
5 final approval and seek to schedule a Final Approval Hearing on or about sixty-five
6 (65) days from the publication of the Preliminary Approval Order as set forth in
7 Section 5.2(ii).

8 5.4. Settling Defendants will cooperate and take all appropriate steps and
9 use their best efforts to furnish to Plaintiffs' Counsel all information and
10 documents, if any, in their possession, custody or control (and not otherwise in the
11 possession of Plaintiffs or Plaintiffs' Counsel) concerning the identity and
12 whereabouts of current or former stockholders in order that notice of the Settlement
13 may be provided to USAE stockholders in the manner provided for in the
14 Preliminary Approval Order and to allow Plaintiffs' Counsel to make a distribution
15 from the Settlement Amount to USAE stockholders as provided in section 2.2.2.
16 Plaintiffs and Plaintiffs' Counsel understand and agree that Dentons does not
17 possess any such information or documents.

18 5.5. Defendants Arnold, Daisy Rodriguez, TUSA and KC-X represent and
19 warrant, individually and/or in their capacities as agents, representatives, members,
20 officers, directors, stockholders or creditors of any entity, that they will take all
21 appropriate steps in furtherance of the Settlement, including not objecting to
22 Plaintiffs' motions for approval of the Settlement and any hearings or submissions
23 in connection therewith, and will not engage in any conduct that has the intent or
24 effect of impeding, delaying or interfering with the effectuation and Court approval
25 of the Settlement.

26 5.6. Plaintiffs and Plaintiffs' Counsel will take all appropriate steps and use
27 their best efforts to obtain an order finding that this Settlement was reached in good
28 faith pursuant to federal common law and California Code of Civil Procedure

1 § 877.6, which shall discharge all claims for contribution brought by other Persons
 2 ("Bar Order"). Settling Defendants will cooperate with Plaintiffs and Plaintiffs'
 3 Counsel in their effort to obtain that Bar Order.

4 5.7. Plaintiffs and Plaintiffs' Counsel will take all appropriate steps and use
 5 their best efforts to obtain entry of the Judgment in the form attached as Exhibit A
 6 hereto. Settling Defendants will cooperate with Plaintiffs and Plaintiffs' Counsel in
 7 their effort to obtain entry of that Judgment.

8 5.8. Upon the Court's approval of the Settlement and entry of judgment,
 9 the Litigation against Released Defendants will be dismissed with prejudice.
 10 Settling Defendants and their counsel agree to cooperate with Plaintiffs in seeking
 11 preliminary and final Court approval of the Settlement and to promptly agree upon
 12 and execute all such other documentation as may be reasonably required to obtain
 13 such approval.

14 5.9. The Effective Date of the Stipulation shall be conditioned on the
 15 occurrence of all of the following events:

- 16 a) the Court has entered a Judgment approving the Settlement and
 17 dismissing the Litigation against Released Defendants with
 18 prejudice; and
- 19 b) the Judgment has become Final, as defined in section 1.10, above.

20 If the conditions specified in this section 5.9 are not met, then the Stipulation shall
 21 be cancelled and terminated subject to section 5.10 unless Plaintiffs' Counsel and
 22 Defendants' counsel mutually agree in writing to proceed with the Stipulation.

23 5.10. In the event that the Stipulation is not approved by the Court, or the
 24 Settlement set forth in the Stipulation is terminated or fails to become Final in
 25 accordance with its terms, all parties to the Litigation (including all Plaintiffs and
 26 all Defendants) shall be restored to their respective positions in the Litigation as of
 27 the date of signing this Stipulation, and the Co-Escrow Agents shall return the
 28 Settlement Amount, and any accrued interest thereon, minus the costs incurred to

1 provide notice to USAE Shareholders pursuant to Paragraph 5.2 hereof but not
 2 including any administration fees or other fees or expenses, to the depositing parties
 3 in an amount corresponding to their respective contributions. In such event, the
 4 terms and provisions of the Stipulation shall have no further force and effect with
 5 respect to all parties to the Litigation and shall not be used in the Litigation or in
 6 any other proceeding for any purpose, and any Judgment or order entered by the
 7 Court in accordance with the terms of the Stipulation shall be treated as vacated,
 8 nunc pro tunc.

9 **6. Miscellaneous Provisions**

10 6.1. The Settling Parties: (a) acknowledge that it is their intent to
 11 consummate this Stipulation; and (b) agree to cooperate to the extent reasonably
 12 necessary to effectuate and implement all terms and conditions of the Stipulation
 13 and to exercise their best efforts to accomplish the foregoing terms and conditions
 14 of the Stipulation.

15 6.2. The Settling Parties intend this Settlement to be a final and complete
 16 resolution of all disputes between them with respect to the Litigation. The
 17 Stipulation compromises claims which are contested and shall not be deemed an
 18 admission by any Settling Party as to the merits of any claim, allegation or defense.
 19 While retaining their right to deny that the claims advanced in the Litigation were
 20 meritorious, the Defendants in any statement made to any media representative
 21 (whether or not for attribution) will not deny that the Litigation was filed in good
 22 faith and is being settled voluntarily after consultation with competent legal
 23 counsel.

24 6.3. Neither the Stipulation nor the Settlement, nor any act performed or
 25 document executed pursuant to or in furtherance of the Stipulation or the
 26 Settlement: (a) is or may be deemed to be or may be used as an admission of, or
 27 evidence of, the validity of any Released Claim, or of any wrongdoing or liability
 28 of the Released Defendants; or (b) is or may be deemed to be or may be used as an

1 admission of, or evidence of, any fault or omission of any of the Released
2 Defendants in any proceeding of any kind or nature, except in a proceeding
3 commenced to enforce the terms of this Stipulation. The Released Defendants may
4 file the Stipulation and/or the Judgment in any action that may be brought against
5 them in order to support a defense or counterclaim based on principles of res
6 judicata, collateral estoppel, release, good faith settlement, judgment bar or
7 reduction, or any other theory of claim preclusion or issue preclusion or similar
8 defense or counterclaim.

9 6.4. The Exhibits to this Stipulation are a material and integral part hereof
10 and are fully incorporated by this reference.

11 6.5. The Stipulation may be amended or modified only by a written
12 instrument signed by or on behalf of all Settling Parties or their respective
13 successors-in-interest.

14 6.6. This Stipulation and all documents executed pursuant hereto constitute
15 the entire agreement among the Settling Parties with respect to the Settlement of the
16 Litigation and supersede any and all prior negotiations, discussions, agreements or
17 undertakings, whether oral or written, with respect to the Settlement of the
18 Litigation.

19 6.7. No representations, warranties or inducements have been made to any
20 Settling Party concerning the Stipulation other than the representations, warranties
21 and covenants contained and memorialized in this Stipulation. Except as otherwise
22 expressly provided in this Stipulation, each Settling Party shall bear its own costs,
23 including attorneys' fees.

24 6.8. Each counsel executing the Stipulation on behalf of any party hereto
25 hereby warrants that such person has the full authority to do so.

26 6.9. The Parties acknowledge, represent and warrant to each other that the
27 terms of this Settlement are such that each of the Parties is to receive adequate
28 consideration for the consideration given.

1 6.10. The Stipulation may be executed in one or more counterparts. All
2 executed counterparts and each of them shall be deemed to be one and the same
3 instrument. A complete set of original executed counterparts shall be filed with the
4 Court. Facsimile signatures shall be effective as though original.

5 6.11. The Stipulation shall be binding upon, and inure to the benefit of, the
6 successors and assigns of the Settling Parties.

7 6.12. Any signature to this Stipulation, to the extent signed and delivered by
8 means of a facsimile machine or electronically scanned and sent via email, shall be
9 treated in all manner and respects as an original signature and shall be considered to
10 have the same binding legal effect as if it were the original signed version thereof
11 delivered in person. At the request of a Party to this Stipulation, any other Party to
12 this Stipulation so executing and delivering this document by means of a facsimile
13 machine or via email shall re-execute original forms thereof and deliver them to the
14 requesting Party. No Party to this Stipulation shall raise the use of a facsimile
15 machine or email to deliver a signature or the fact that any signature or agreement
16 was transmitted or communicated through the use of a facsimile machine or email
17 as a defense to the formation or the enforceability of this Stipulation and each such
18 Person forever waives any such defense.

19 6.13. The Court shall retain jurisdiction with respect to implementation and
20 enforcement of the terms of the Stipulation, and all of the Settling Parties and their
21 counsel submit to the jurisdiction of the Federal Court for purposes of
22 implementing and enforcing the Settlement embodied in the Stipulation.

23 6.14. This Stipulation shall be deemed to have been negotiated, executed
24 and delivered, and to be wholly performed, in the State of California, and the rights
25 and obligations of the Settling Parties to the Stipulation shall be construed and
26 enforced in accordance with, and governed by, the internal, substantive laws of the
27 State of California without giving effect to that State's choice of law principles.
28

1 6.15. Prior to the Effective Date, Settling Defendants agree that they will not
2 engage in any activities intended to dissipate or dispose of any assets of USAE.
3 Settling Defendants further agree that, upon the Effective Date, they shall have no
4 right to exercise dominion, control or ownership over USAE or its assets, including
5 any government cage codes and licenses, and will not interfere with the lawful
6 rights of any party to such assets.

7 6.16. All agreements made and orders entered during the course of the
8 Litigation relating to the confidentiality of information shall survive this
9 Stipulation.

10 IN WITNESS WHEREOF, the Settling Parties hereto executed the
11 Stipulation or have caused the Stipulation to be executed by their duly authorized
12 attorneys.

13 DATED: December 15, 2017

14 **WOLF HALDENSTEIN ADLER**
15 **FREEMAN & HERZ LLP**
16 RACHELE R. RICKERT
17 MARISA C. LIVESAY
18 BRITTANY N. DEJONG

19 By: /s/ Rachele R. Rickert
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36 *Attorneys for Plaintiff Frederick Rich*

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28 DATED: December 15, 2017

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39 *Attorneys for Defendants James D. Henderson
40 and Michael L. Goldberg*

1 DATED: December 15, 2017

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9 *Attorneys for Defendants Daisy Rodriguez,
10 Charles Arnold, KC-X American Aerospace, LLC,
11 and TUSA Acquisition Corp.*

12
13 **DECLARATION CONCERNING CONCURRENCE**

14 I, Rachele R. Rickert, am the CM/ECF User whose identification and password are
15 being used to file this STIPULATION OF SETTLEMENT. I hereby attest that Michael
16 C. Hefter, W. Allan Edmiston, Alan H. Finkel and David L. Fleck have concurred in this
17 filing's content and have authorized its filing.

18 DATED: December 15, 2017

19 /s/ Rachele R. Rickert

20 RACHELE R. RICKERT

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